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OPERABLE UNIT 4

ATTACHMENT 2 - MAP OF TAR CREEK SUPERFUND SITE

ATTACHMENT 3 - MAP OF OPERABLE UNIT 4

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6**

IN THE MATTER OF:	)	CERCLA DOCKET NO. 6-03-01
)	
Tar Creek Superfund Site	)	ADMINISTRATIVE ORDER
Ottawa County, Oklahoma	)	ON CONSENT FOR RI/FS FOR OU4
)	
	)	Proceeding under Sections 104, 122(a), and
	)	122(d)(3) of the Comprehensive
Blue Tee Corp.,	)	Environmental Response, Compensation
Gold Fields Mining Corporation, and)	
U.S. Department of the Interior	)	and Liability Act, 42 U.S.C. §§ 9604, U.S.
	)	9622(a), and 9622(d)(3)
)	
Respondents)	
_____)	

**ADMINISTRATIVE ORDER ON CONSENT FOR
REMEDIAL INVESTIGATION/FEASIBILITY STUDY
FOR OPERABLE UNIT 4**

I. INTRODUCTION

1. This Administrative Order on Consent (“Order” or “AOC”) is entered into voluntarily by the U.S. Environmental Protection Agency (“EPA”), and the Respondents, Blue Tee Corp., Gold Fields Mining Corporation, and the Federal Respondent, U.S. Department of the Interior. (Hereinafter Blue Tee Corporation, and Gold Fields Mining Corporation are collectively referred to as “Respondents.” Hereinafter references to the “Federal Respondent” mean the U.S. Department of the Interior.) As provided herein, the Respondents shall prepare and perform a Remedial Investigation and Feasibility Study (“RI/FS”) for Operable Unit 4 (“OU4”) of the Tar Creek Superfund Site located in Ottawa County, Oklahoma (the “Site”) except for the Baseline Risk Assessment. EPA will perform the Baseline Risk Assessment, but Respondents shall support EPA by providing site characterization information as provided in this Order including without limitation the Statement of Work (“SOW”). Respondents shall pay EPA for EPA’s Baseline Risk Assessment costs as provided in Section XXIII (Special Account for Response Costs). As provided herein, Respondents and the Federal Respondent shall

reimburse the EPA for all of EPA's response costs except for past response costs. (The terms "response costs" and "past response costs" are as defined herein.) Respondents shall make response cost reimbursement payments to EPA as provided in Section XXIII (Special Account for Response Costs). Under the terms of Section X (Reimbursement of Respondents by the Federal Respondent) of the Order, the Federal Respondent shall make an initial payment (additional payments may be required under the Order) of \$1,000,000 to the Respondents who shall use this payment, along with their own funds to perform the RI/FS and to reimburse EPA. Notwithstanding any other provision of this Order, neither the Respondents' nor the Federal Respondent's compliance with this Order is contingent upon any other party or parties compliance with the Order. As provided in paragraph 42, Respondents shall provide copies of all submissions to the ODEQ and to the Quapaw Tribe for their review. The EPA will consider timely comments submitted by the ODEQ and by the Quapaw Tribe as provided in paragraph 42.

II. JURISDICTION

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 122(a), and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9622(a), and 9622(d)(3) (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987); further delegated to Regional Administrators by EPA Delegation No. 14-14-C (April 15, 1994); and redelegated by the Regional Administrator to the Director, Superfund Division, by EPA Delegation No. R6-14-14-C (June 8, 2001).

3. Respondents and the Federal Respondent agree to undertake the requirements of this Order. In any action by EPA or the United States to enforce the terms of this Order, Respondents and the Federal Respondent consent to and agree not to contest the authority or jurisdiction of EPA to issue or enforce this Order, and agree not to contest the validity of this Order or its terms. The Respondents' and Federal Respondent's participation in this Order shall not constitute an admission of liability or agreement with EPA's findings or determinations contained in this Order, except as necessary in a proceeding to enforce the terms of this Order.

III. PARTIES BOUND

4. This Order applies to and is binding upon EPA and upon Respondents and the Federal Respondent, their agents, successors, assigns, officers, directors and principals. Respondents and the Federal Respondent are responsible for carrying out all the requirements of

this Order as they apply to them respectively. The signatories to this Order certify that they are authorized to execute this Order and legally bind the parties they represent to this Order. No change in the ownership or corporate status of Respondents, or of OU4, including any transfer of assets, or in the agency structure or responsibilities of Federal Respondent, will alter Respondents' or Federal Respondent's responsibilities under this Order. Notwithstanding any other provision of this Order, Respondents are jointly and severally liable for carrying out all the requirements of this Order, and compliance or noncompliance by one Respondent with any requirement of this Order shall not excuse or justify noncompliance by the other Respondent(s).

5. The Respondents shall provide a copy of this Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Respondents shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants which are retained by the Respondents to conduct any work performed under this Order, within 14 days after the effective date of this Order or the date of retaining their services, whichever is later. Respondents shall condition any such contracts upon satisfactory compliance with this Order. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Order and for ensuring that their subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Order.

IV. STATEMENT OF PURPOSE

6. In entering into this Order, the objectives of EPA, the Respondents, and Federal Respondent are as follows: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from OU4, by conducting a remedial investigation; (b) to determine and evaluate alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from OU4, by conducting a feasibility study; and (c) to have Respondents and the Federal Respondent reimburse EPA for its response costs except for past response costs as specified in this Order.

7. Respondents' work conducted under this Order is subject to approval by EPA. Respondents shall provide all information that EPA requires in order for Respondents to develop a RI/FS. [Respondents will not develop the Baseline Risk Assessment portion of the Remedial Investigations which will be performed by EPA. EPA will perform the Baseline Risk Assessment, but Respondents shall support EPA by providing site characterization information as provided in this Order including without limitation the SOW. Respondents shall pay EPA for EPA's Baseline Risk Assessment costs as provided in Section XXIII (Special Account for

Response Costs).] Respondents shall conduct all requirements of this order in accordance with EPA guidance documents, policies, and procedures that a Remedial Project Manager (RPM) identifies as applicable, unless otherwise directed by a RPM in writing.

V. DEFINITIONS

8. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in CERCLA or in regulations promulgated under it will have the meaning assigned to them in CERCLA or the regulations. Whenever terms listed below are used in this Order including without limitation the SOW, the following definitions apply (whether or not they are capitalized):

"ARARs" means all "applicable requirements" or "relevant and appropriate requirements" as defined at 40 CFR § 300.5 and 42 U.S.C. § 9621(d).¹

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 to 9675.

"Chat" means gravel-like mine or mill tailings including without limitation intermingled fine material.

"Chat Base" means the area that was once occupied by a chat pile. Chat bases can be either vegetated or non-vegetated chat, and are generally found in areas with little or no relief (compared to chat piles which are typically mounded).

"Covered Response Costs" shall mean (1) all response costs incurred by the Respondents to perform the Work in compliance with the terms of the AOC, and (2) any Response Costs, as that term is defined in this Order, incurred by EPA in connection with the implementation of the AOC that (A) have been reimbursed from the special account provided for in Section XXIII (Special Account for Response Costs) and (B) are not in dispute by Respondents under the provisions of Paragraph 98. "Incurred" in relation to costs shall mean (1) for costs paid to a third party, the actual amounts paid to the third party, and (2) for internal costs, the actual cost borne.

¹While these sections of CERCLA and the NCP refer only to State and Federal applicable requirements and to State and Federal relevant and appropriate requirements, applicable requirements and relevant and appropriate requirements of the Quapaw Tribe are also ARARs since the Tribe is to be treated substantially the same as a state for this purpose under CERCLA and the NCP.

“Day” means a calendar day unless expressly stated to be a business or working day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Business day or working day means a day other than a Saturday, Sunday or Federal holiday.

“Deliverable” means any action, activity, task, or submission required to be done by Respondent under this Order. A deliverable is work.

“Effective Date” means the date this Order is signed by EPA, Respondents, and the Federal Respondent.

“EPA” means the United States Environmental Protection Agency.

“Flotation Pond” shall mean any area where milling operations once discharged liquid waste including without limitation water contaminated with fine mill waste. These areas are also referred to as slime ponds, mill ponds or tailings ponds. Many of these flotation ponds are now dry, but the contamination (including contaminated sediment to unknown depths) remains.

For the purposes of this Order including the SOW, the words "include," "includes," or "including" shall not be construed as words of limitation; that is, they shall be construed such that the phrases "without limitation" or "but not limited to" are implied, unless such phrases are already in place. For example, "including x, y, and z" would be construed as "including without limitation x, y, and z" or as "including, but not limited to, x, y and z," but the phrase "including, but not limited to, x, y and z" would be construed as it reads.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.²

²The Superfund currently is invested in 52-week MK bills. The interest rate for these MK bills changes on October 1 of each year. To obtain the current rate, contact Vince Velez, Office of Administration and Resource Management, Financial Management Division, Superfund Accounting Branch, at (202) 564-4972.

"Federal Respondent" means the U.S. Department of the Interior.

"Mine and Mill Tailings" shall mean all tailings and byproducts of the mining or milling process, including without limitation development rock, fine tailings as found in former flotation pond areas, other fines, slag, sands, chat, and flotation sediments, whether or not these tailings and byproducts were ever considered a usable material. That is, these tailings and other mining and milling byproducts are included as mine and mill tailings under this Order whether or not they ever have had or will have a commercial use.

"National Contingency Plan" or "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments.

"ODEQ" means the Oklahoma Department of Environmental Quality and its successor agencies.

"Operable Unit 4" or "OU4" means noncontiguous, asymmetrical parts of the Site (both urban and rural) that are not presently used for residential purposes or which are sparsely used for residential purposes, where mine and mill tailings have been deposited, stored, disposed of, placed, or otherwise come to be located as a result of mining, milling or related operations (*e.g.*, in a rural Site area— an area with one or two residences per square mile, containing former flotation pond areas, chat bases or chat piles and associated transition zones; or, in an urban Site area—an empty lot containing former flotation pond areas, chat bases or chat piles and associated transition zones). Specifically excluded from OU4 are mine and mill tailings located on roadways or alleyways, or that has been physically transported to a location that is not contiguous with its original location by someone other than a mine or mill operator in connection with mining, milling or related operations. (Excepted from the exclusion in the preceding sentence, and included in OU4, are unpaved roadways or alleyways that are built on or contiguous to chat piles, chat bases, or flotation ponds.) OU4 does not include mine shafts, or underground mine workings. OU4 is generally described on the attached Map (Attachment 3) entitled "Map of Operable Unit 4, Tar Creek Superfund Site;" however, the size and shape of OU4 may change somewhat as new information is gathered as the RI/FS proceeds. Under this Order, the Respondents shall conduct a RI/FS for OU4.

"Order" means this document, the Statement of Work ("SOW"), and all documents incorporated by reference into this document including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports)

are incorporated into and become a part of the Order upon approval by EPA.

“Paragraph” means a portion of this Order identified by an Arabic numeral. Paragraphs may have subparagraphs identified with lower case letters. References to paragraphs in the Statement of Work will be so identified (for example, “SOW paragraph 15”)

"Past Response Costs" means all costs, including direct costs, and indirect costs, paid by the EPA related to OU4 through the Effective Date, plus accrued Interest on all such costs through the Effective Date. Past Response Costs include without limitation Response Costs paid through the Effective Date.

"Performance Standards" shall mean those cleanup standards, work standards, standards of control, criteria, or limitations identified in this Order including without limitation the Statement of Work and also including without limitation submissions which are approved by EPA in writing. EPA will use the Performance Standards to determine whether the work required by the Order has been completed. Except where it is inconsistent with the National Contingency Plan as specified by the RPM in writing, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, OSWER Directive 9355.3-01 (October 1988) (hereinafter the RI/FS Guidance) is a Performance Standard. Except where they are inconsistent with this Order as specified by the RPM in writing, the other EPA guidance documents cited in this order or in the SOW are also Performance Standards. It is a requirement of this Order for Respondents to meet Performance Standards.

“Quapaw Tribe” or “Tribe” shall mean the Quapaw Tribe of Oklahoma.

“Requirements of this Order” or a similar term means payments that Respondents or Federal Respondent are to make under this Order, work that Respondents are to perform under this Order, scheduled deadlines that Respondents are to meet under this Order including without limitation deadlines in schedules in EPA-approved submissions, performance standards, and any other obligation of Respondents under this Order. Subject to the provisions of Section XXII (Force Majeure), it is a violation of this Order for Respondents to fail to complete or meet a requirement of this Order.

“Respondents” means Blue Tee Corp. and Gold Fields Mining Corporation. Blue Tee Corp. operated in Ottawa County through its predecessor company, American Zinc, Lead and Smelting Company (“AZLC”) and Gold Fields Mining Corporation operated in

Ottawa County through its predecessor company, Tri-State Zinc, Inc. (“TSZI”).

"Response Costs" mean all costs, including direct costs, and indirect costs, paid by the EPA related to the RI/FS for OU4 plus accrued Interest on all such costs. Response Costs include without limitation costs paid by EPA in order to oversee, perform or support response actions for the RI/FS. Response Costs include without limitation overhead costs, accounting costs, cleanup costs, enforcement costs, community relations costs and legal costs (including costs incurred by the U.S. Department of Justice (DOJ) on behalf of EPA). Response Costs include costs incurred by the EPA in overseeing Respondents' implementation of the requirements of this Order (i.e., oversight costs). Response Costs include without limitation activities performed by the EPA as part of the RI/FS including, but not limited to, the Baseline Risk Assessment. Response Costs include without limitation costs incurred by the EPA (and DOJ) in obtaining access. Response Costs include without limitation time and travel costs of EPA personnel, contractor costs, interagency agreement costs, cooperative agreement costs, compliance monitoring including the collection and analysis of split samples, inspection of RI/FS activities, site visits, discussions regarding disputes that may arise as a result of this Order, review and approval or disapproval of reports, costs of performing the Baseline Risk Assessment, and costs of redoing any of Respondents' work.

“Section” means a portion of this Order identified by a Roman numeral and includes one or more paragraphs. References to sections in the SOW will be so identified; for example, as “SOW Section V.”

“Site” means the Tar Creek Superfund Site. The Site is located in an undefined area of approximately 40 square miles in Ottawa County, Oklahoma. The Site includes, but is not limited to, the Oklahoma portion of a former lead and zinc mining area (Picher Mining Field), and any area where a hazardous substance from mining or milling in Ottawa County has been deposited, stored, disposed of, placed, or otherwise come to be located. OU4 is part of the Site. The principal communities on the Site are Commerce, Cardin, Picher, Quapaw, and North Miami, Oklahoma. The Site is described in the attached map (Attachment 2) which is incorporated herein by reference; however, it may be determined by EPA that the Site is somewhat larger or somewhat differently shaped than the area described in the attached map.

“State” means the State of Oklahoma. The State is represented by the ODEQ under this Order.

“Statement of Work” or “SOW” means the Statement of Work for the development of a RI/FS for OU4, as set forth in Attachment 1 to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order.

“Submission” means any written materials Respondents are required to produce under this Order, including correspondence, memoranda, notifications, plans, reports, specifications, and schedules. A submission is a deliverable. Submissions include without limitation work plans and the schedules therein. Once a submission (other than a monthly progress report) is approved in writing by EPA, the submission is incorporated into this Order and becomes an enforceable part of this Order.

"Tar Creek OU4 Special Account for RI/FS" shall mean the special account established for the OU4 RI/FS pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3), and this Order.

“Transition Zone” means the greater of (a) the land surface area that begins at the edges of a chat pile, chat base, or flotation pond, that radiates outward in every direction from the edges of the chat pile, chat base, or flotation pond, and that ends where the concentration of lead, cadmium, and zinc in surface soil (surface soil means all soil from the surface to two feet below ground surface) is below preliminary remediation goals, or (b) the land surface area that begins at the edges of a chat pile, chat base, or flotation pond, that radiates outward in every direction from the chat pile, chat base, or flotation, and that ends 250 feet from the edges.

“Work” means all activities Respondents are required to perform under this Order. Work includes but is not limited to deliverables.

“Work plan” means a plan, to be developed by Respondents for EPA review and approval, that includes schedules for and descriptions of work that Respondents shall undertake under this Order.

VI. FINDINGS OF FACT

Based on available information, and, for purposes of enforceability of this Order only, EPA hereby finds, and the Respondents and Federal Respondent stipulate that, the factual statutory prerequisites under CERCLA necessary for issuance of this Order have been met. Respondents and Federal Respondent hereby agree not to challenge the enforceability of this Order in any

proceeding to enforce this Order. EPA's findings include the following:

9. The Site is located in an undefined area of approximately 40 square miles in Ottawa County, Oklahoma. The Site includes, but is not limited to, the Oklahoma portion of a former lead and zinc mining area (Picher Mining Field), and any area where a hazardous substance from mining or milling in Ottawa County has been deposited, stored, disposed of, placed, or otherwise come to be located. OU4 is part of the Site. The principal communities on the Site are Commerce, Cardin, Picher, Quapaw, and North Miami, Oklahoma. The Site is on or about the shaded areas shown in the attached map (Attachment 2) which is incorporated herein by reference; however, it may be determined by EPA that the Site is somewhat larger or somewhat differently shaped than the area described in the attached map. As a result of mining and milling operations, large quantities of tailings were deposited on the surface of the ground in piles ("chat piles") and in ponds ("flotation ponds") on the Site (most of the ponds have evaporated leaving behind a sediment of tailings). Most of the tailings are still located on the Site. Lead, cadmium, zinc, sulfuric acid and other hazardous substances have escaped into the soil, surface water, ground water, and air from these tailings.

10. There were discoveries of lead ore and zinc ore and the beginning of mining operations near Quapaw and Commerce on the Site in the early 1900s. The lead ore mined was galena (lead sulfide), and the zinc ore was sphalerite (zinc sulfide). The Boone Formation which lies under the Site was the source of the metal ores and is also an aquifer. Land in much of the Site was allotted to Quapaw Indians who, with certain exceptions, were wards of the Federal Respondent. Major expansion of the Oklahoma portion of the mining district which lies at the intersection of Oklahoma, Missouri, and Kansas and which is known as the Tri-State District occurred after a major discovery near the current site of Picher in 1914 by the Picher Lead Company, a predecessor of the Eagle-Picher Lead & Zinc Company. Following the discovery there was a vast expansion of mining in what came to be known as the Picher Mining Field of Oklahoma and Kansas. The Oklahoma part of this field was fairly well defined by the end of 1917, and is included as part of the Site. After 1919, the bulk of the ore output of the Tri-State District came from the Picher Mining Field. The Picher Mining Field reached maximum production in the 1920's. While there were significant periods of reduced mining activity because of reduction in metal prices, some mining in Ottawa County occurred more or less continuously until the 1950's. The last large mining company closed down underground mining operations in 1958. Smaller operations continued sporadic mining in the Picher Mining Field area until the 1970's.

11. Early mining operations on the Site were characterized by a large number of small mining operators, each operating on 20- to 40-acre tracts. Each mine generally had its own mill.

Since Picher Mining Field ore was richer than ore being mined in Missouri, many of the mills in Missouri were closed, and the milling machinery was physically moved to Oklahoma. In the 1920's consolidation of the smaller tracks with a single mill processing ore from a larger area resulted in the closure of many small mills. In the 1930's further consolidation of milling operations occurred with the construction of several central mills. The central mills were used to mill ore mined or purchased by the operators of the central mills. The central mills also custom milled ore mined by others. Custom milling is a practice where a mine operator contracts with a custom mill operator for such mill to process the ore produced by the mine operator. The resulting concentrate is returned to the mine operator for disposition in accordance with the mine operator's lease. In some instances, the central mill purchases the ores and, consequently, the mill owns the concentrate. With the establishment of custom milling, many mine operators ceased their own milling operations, using central mills instead.

12. The milling of ore at the Site produced large quantities of tailings. The chat was typically disposed of in a pile (a "chat pile") on the Site by means of an elevator or a belt conveyor. The fine tailings produced from flotation milling were typically pumped as a slurry to a flotation pond on the Site where the water was recycled to the mill after the fine tailings had settled to the bottom of the flotation ponds as sediment. After termination of operations, the dikes of some of the flotation ponds were breached allowing the water to drain out, and other ponds were allowed to evaporate. Whether breached or left to evaporate, sediment contaminated with lead, cadmium, zinc and other hazardous substances was left behind in the location of these flotation ponds. It was estimated by the Oklahoma Geological Survey, in 1980, that approximately 70 million tons of chat and intermingled sand-sized tailings remained on the Site in the original chat piles. A large, but lesser, quantity of flotation pond tailings also remained. Although the quantity of flotation pond tailings probably measures in the millions of tons, a numerical quantitative estimate is not available.

13. The predecessors of Respondents conducted mining, milling, and related operations on OU4.

14. EPA Region 6 began environmental investigations at the Site in 1982. EPA Region 6 is the EPA regional office with responsibility for CERCLA actions in Oklahoma. The first RI/FS for the Site was completed in December 1983. Based upon the 1983 RI/FS, on June 6, 1984, EPA Region 6 issued a Record of Decision (ROD) memorializing the remedy selected for certain portions of the Site. The 1984 ROD addressed two primary concerns: 1) the surface water degradation of Tar Creek, a stream located on the Site, by the discharge of acid mine water; and 2) the threat of contamination of the Roubidoux Aquifer which lies under the Site. At the time the 1984 ROD was issued, EPA was concerned that the Roubidoux, which supplies water

for domestic use in the Site area, would be contaminated by downward migration of acid mine water from the contaminated Boone Aquifer which is located in geologic strata which occur above the Roubidoux. Specifically, EPA was concerned that contaminated ground water from the Boone would migrate to the Roubidoux through abandoned wells connecting the Boone with the Roubidoux. Pursuant to EPA's 1984 ROD, in order to address the surface water contamination in Tar Creek, dikes were constructed to reduce the inflow of surface water into collapsed mine shafts. By reducing the flow of surface water into the collapsed shafts, EPA's intention was to eliminate or reduce the outflow of contaminated water from an exploration borehole that drained to Tar Creek. Also pursuant to EPA's 1984 ROD, in order to address the potential contamination of the Roubidoux aquifer, many abandoned wells which penetrated the Roubidoux formation were plugged. The construction of diversion dykes and the plugging of some wells, as called for in the 1984 ROD were completed in December 1986, but some work continues under the 1984 ROD (generally ground water monitoring, and well and borehole plugging). The construction of diversion dykes under OU1 did not reduce or eliminate the outflow of contaminated water as intended. The 1984 ROD did not address the tailings piles (chat piles) and ponds (flotation ponds) and other mine and mill tailings on the ground surface at the Site including without limitation OU4.

15. In 1994, EPA Region 6 received, from the Indian Health Service, test results concerning the concentration levels of lead in the blood of Indian children living on the Site. The test results indicated that approximately 35 percent of the Indian children tested had concentrations of lead in their blood which exceeded 10 micrograms per deciliter ($\mu\text{g}/\text{dL}$), which is the level currently considered elevated for children six-years-old and younger based on the Centers for Disease Control's (CDC) 1991 lead statement. The definition of elevated blood lead in young children is the threshold level at which adverse health effects have been shown to occur. The previous lead statement issued by CDC in 1985 had defined the level of 25 $\mu\text{g}/\text{dL}$ as elevated. When the ROD was signed in 1984, the level of 30 $\mu\text{g}/\text{dL}$ was considered elevated by CDC. EPA presented this new 1994 information, regarding elevated concentrations of lead in the blood of Indian children who lived on the Site, as part of the Five-Year Review report for the Site which was published in April 1994. In the Five-Year Review report, EPA recommended, based on this new information, that the surficial mine and mill tailings be investigated to determine if additional remediation, beyond the remediation carried out under the 1984 ROD, at the Site was needed to protect human health or welfare or the environment. Based on this new information (the elevated concentrations of lead in the blood of Indian children), based on the conclusions of the Five-Year Review, and based on new information uncovered in investigations which began May 1, 1994, EPA determined that further investigations should be completed for the residential areas of the Site.

16. As explained in the preceding paragraph, with the issuance of the 1994 Five-Year Review, additional potential contamination risks were identified in residential areas at the Site; consequently, in order to differentiate the areas of concern, in 1994 EPA began referring to the concerns addressed by the 1984 ROD as Operable Unit 1. Under the National Contingency Plan (NCP), operable unit means a discrete action that comprises an incremental step toward comprehensively addressing site problems. Each Operable Unit is a discrete portion of a remedial response that manages migration, or eliminates or mitigates a release, the threat of a release, or pathway of exposure. The cleanup of a Superfund site can be divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a Superfund site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site. Operable Unit 2 ("OU2") is addressed in the 1997 ROD. Generally, the cleanup under OU2 has been directed at contaminated soil in residential areas on the Site.

17. As explained above, over the years, millions of tons of mill tailings were disposed of at the Site generally in chat piles and flotation ponds. These chat piles and flotation ponds on the Site were located next to the mill that produced them. During the years of mining, milling, and related operations at the Site, controls such as berms or soil cover to prevent the dispersal of tailings about the Site were not commonly employed. Consequently, the tailings and hazardous substances contained therein which were disposed of on the Site during milling operations, have been further dispersed about the Site by various means. Some tailings came to be located in residential areas of Operable Unit 2 because people have carted the tailings to the residential areas for use as fill, driveways, alleyways, roadbeds, yards and home playgrounds, as well as through their use on chat-covered roads and alleyways and in foundations for homes and buildings. Some Site homes have been built on tailings. The EPA found that children were playing in tailings in Operable Unit 2. Moreover, extensive blood lead studies done on the Site found that unacceptable percentages of children living on the Site had blood lead levels that exceeded the 10 µg/dL level that the CDC considers to be dangerous. In fact, a study found that more than 60% of the children tested in Cardin at the time had blood lead levels that exceeded 10 µg/dL. The tailings were pervasive and widespread in residential areas in the Operable Unit 2 area. Residents, especially children, were directly exposed to contaminated mine and mill tailings in the Operable Unit 2 area.

18. Accordingly, in order to address the threat to children, in August 1994, the EPA Region 6 Emergency Response Branch began sampling soils at the high access areas (HAAs) on the Site. The HAAs are day cares, school yards, athletic fields, playgrounds and other areas where children tend to congregate. The EPA initially targeted the HAAs because children are

most susceptible to the toxic effects of lead, and lead was known to be present on the Site. A total of 28 HAAs were sampled between August 1994 and October 1994. This phase of sampling at the Site detected significant concentration levels of lead, cadmium, and other heavy metals in surface soils at these HAAs. At many of the HAAs, the concentration levels of lead and cadmium were greater than the concentration levels which EPA generally considers to be concentration levels at which removal action should be considered. In March 1994, EPA expanded its sampling activity to include all residences on the Site.

19. Using its removal action authority, beginning in 1995, EPA began to excavate lead- and cadmium-contaminated soil at HAAs and at Site residences. Concurrently, EPA began a RI/FS for Operable Unit 2. In 1997, EPA Region 6 issued a ROD to address contaminated soil in the residential areas of Operable Unit 2. Under the removal actions and under the Operable Unit 2 ROD, EPA excavated lead-contaminated soil at more than 1,647 homes and properties, up to a depth of 18 inches, and took the contaminated soil to a repository located on the Site. Excavated areas were backfilled with clean soil. Since EPA has undertaken the action to address contaminated soil in Operable Unit 2, blood lead levels in Site children have decreased dramatically.

20. The contamination at the OU4 portion of the Site has yet to be fully investigated and addressed. Accordingly, as described above, in entering into this Order, among the RI/FS objectives of EPA and Respondents are the following: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from chat piles, chat bases, flotation ponds, and transition zones located in OU4, by conducting a remedial investigation; (b) to determine and evaluate alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from chat piles, chat bases, flotation ponds, and transition zones located on OU4, by conducting a feasibility study.

21. Mine and mill tailings dumped and disposed of on the surface soil at OU4 contain hazardous substances including without limitation cadmium, lead, zinc, and sulfuric acid. These hazardous substances are listed below and may produce the described adverse health and environmental effects:

Cadmium – Cadmium can cause a number of adverse human health effects.

Ingestion of high levels of cadmium (*e.g.*, 10 milligrams (mg)) can cause severe irritation of the gastrointestinal tract, leading to vomiting and diarrhea. Inhalation of high levels of cadmium (*e.g.*, 1 mg per cubic meter of air) may lead to severe irritation of the lungs.

Such high exposures however, are rare in environmental settings and are usually reported following occupational or accidental exposures. (These types of cadmium exposures have not been observed at the Site.) Another area of concern is the effects which may occur following long-term, low level exposure to cadmium. Animals given cadmium in food or water over extended periods of time show high blood pressure, iron-poor blood, liver disease, and nerve or brain damage. Kidney damage such as stone formation has been observed in people who are exposed to excess cadmium through either air (inhalation) or the diet (ingestion). Cadmium can also lead to effects on the skeleton that are painful and debilitating. Lung damage, such as emphysema, has been observed in workers chronically exposed in factories where levels of cadmium in the air were high. Lung cancer has been observed in animals exposed for long periods of time to cadmium in air. Studies in humans also suggest that long-term inhalation of cadmium can result in an increased risk of lung cancer. Cadmium and cadmium compounds may reasonably be anticipated to be carcinogens.

Lead – Lead can affect almost every organ and system in the body. Children are the most sensitive population for lead exposures with critical effects seen in the nervous system. Peripheral neuropathy or chronic nephropathy may be seen in adults exposed occupationally to lead while the critical effect for the general population is hypertension. Absorption of ingested lead is the most significant route of uptake of lead in humans. Uptake of lead in humans can result from ingestion of lead contaminated food, water, soil, or dust. Chronic exposure to lead can deleteriously affect the blood system, the nervous system and the kidneys in humans. Lead also damages the immune system. The effects are the same whether it is inhaled or swallowed. Exposure to lead is more dangerous for young and unborn children. Harmful effects include premature births, smaller babies, decreased mental ability in the infant, learning difficulties, and reduced growth in young children. These effects are more common after exposure to high levels of lead. Developing children are especially sensitive to lead-induced nervous system injury in the form of lead encephalopathy. Symptoms include, lethargy, vomiting, irritability, loss of appetite, dizziness, epileptoid convulsions, delirium, hallucination, and cerebral edema. Lead induced nervous system damage in children has been shown to decrease cognitive abilities by as much as five IQ points. In adults, lead may decrease reaction time, cause weakness in fingers, wrists, or ankles, and possibly affect the memory. Lead may cause anemia. It can cause abortion, and it can also damage the male reproductive system. Lead acetate and lead phosphate may reasonably be anticipated to be carcinogens based on studies in animals.

Lead has also been classified as a Class B2 - Probable Human Carcinogens. When

a material is a Class B2 Probable Human Carcinogen, it means that there is limited human data indicating that the material is a probable human carcinogen. When a material is a Class B2 Probable Human Carcinogen it means that there is sufficient evidence in animal studies to indicate that the material is a carcinogen in animals.

Lead has also been shown to have detrimental reproductive effects in women, and can be transferred to the fetus through the placenta. Prenatally lead-exposed infants have shorter gestation periods, lower birth weights, reduced mental development, and growth deficits.

Zinc – Harmful health effects generally begin at levels from 10-15 times the Recommended Daily Allowance (RDA) (in the 100 to 250 mg/day range). Eating large amounts of zinc, even for a short time, can cause stomach cramps, nausea, and vomiting. Taken longer, it can cause anemia, pancreas damage, and lower levels of high density lipoprotein cholesterol. Breathing large amounts of zinc (as dust or fumes) can cause a specific short-term disease called metal fume fever. Rats that were fed large amounts of zinc became infertile or had smaller babies. Irritation was also observed on the skin of rabbits, guinea pigs, and mice when exposed to some zinc compounds.

Sulfuric acid – Sulfuric acid lowers pH of ground and surface water, reducing its capacity to support plants and wildlife. Sulfuric acid also puts metals into solution enhancing their ability to migrate.

22. The Site including without limitation OU4 was listed on the National Priorities List (NPL) pursuant to CERCLA Section 105, 42 U.S.C. § 9605, on September 8, 1983.

23. Respondent Blue Tee Corp. is a Maine corporation and is the successor to American Zinc, Lead and Smelting Company (“AZLC”).

24. Respondent Blue Tee Corp.’s predecessor AZLC conducted mining and milling operations on OU4 intermittently during the period from 1925 to 1955.

25. Respondent Gold Fields Mining Corporation is a Delaware corporation and is the successor to Tri-State Zinc, Inc. (“TSZI.”).

26. TSZI conducted mining and milling operations on OU4 during the period from 1927 to 1947.

27. Federal Respondent U.S. Department of the Interior (“DOI”) is an agency of the United States Government.

28. Since about 1887, the DOI has been trustee for its Indian wards who are the beneficial owners of the restricted allotted lands³ on the Site including without limitation any mineral rights located on restricted lands within the Site.

VII. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above and based on other information, EPA has made the following determinations:

29. The Tar Creek Superfund Site including without limitation Operable Unit 4 is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

30. Operable Unit 4 is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). (The OU4 facility is also part of the greater Site facility.)

31. Lead, zinc, cadmium, and sulfuric acid in mine and mill tailings on OU4 as described in Section VI (Findings of Fact) above, are "hazardous substances" as defined by CERCLA, 42 U.S.C. § 9601(14).

32. Respondents Blue Tee Corp. and Gold Fields Mining Corporation and Federal Respondent U.S. Department of the Interior are each a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

33. The EPA alleges that Respondents Blue Tee Corp. and Gold Fields Mining Corporation are each a liable party within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondents Blue Tee Corp. and Gold Fields Mining Corporation do not agree with or stipulate to this allegation, but Blue Tee Corp. and Gold Fields Mining Corporation each agree that they shall not challenge this allegation in a proceeding to enforce this Order.

34. The EPA alleges that Federal Respondent the U.S. Department of the Interior is a liable party within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Federal Respondent does not agree with or stipulate to this allegation, but Federal Respondent agrees

³Allotted Indian land is held in trust by DOI for the benefit of the individual Indian owners. This land is owned in fee simple by individual Indians, subject to restraints on alienation imposed by Congress.

that it shall not challenge this allegation in a proceeding to enforce this Order.

35. The conditions described in Section VI (Findings of Fact) above, constitute an actual or threatened "release" of a hazardous substance from a facility as defined by Sections 101(22) of CERCLA, 42 U.S.C. §§ 9601(22).

36. The actions required by this Order are necessary to protect the public health or welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

VIII. NOTICE

37. By providing a copy of this Order to the State and to the Quapaw Tribe, EPA is notifying the State and the Tribe that this Order is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Order.

IX. WORK TO BE PERFORMED

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site including without limitation OU4, it is hereby ordered and agreed that Respondents shall comply with the following provisions including, but not limited to, Attachments 1, 2, and 3 to this Order and all documents incorporated by reference into this Order, and Respondents shall perform the following actions:

Designation of Contractor

38. All of Respondents' work performed under this Order shall be under the direction and supervision of qualified personnel. The qualifications of the persons undertaking the work for Respondents shall be subject to EPA's review, for verification that such persons meet technical background and experience requirements. This Order is contingent on Respondents' demonstration to EPA's satisfaction that Respondents or their contractors are qualified to perform properly and promptly the work set forth in this Order. Respondents shall perform the work themselves or retain contractors to perform the work. Respondents shall notify EPA of Respondents' qualifications or of the names and qualifications of such contractors within five working days of the effective date of this Order. With respect to any proposed contractor (or the Respondents' proposal to use themselves to do the work), the Respondents shall demonstrate that the proposed contractor (or Respondent) has a quality system which complies with

ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's (or Respondent's) Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. Respondents shall also notify EPA of the names and qualifications of any other contractors or subcontractors retained to perform the work under this Order at least five days prior to commencement of such work. EPA retains the right to, at any time, disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondents, or of Respondents' choice of themselves to do the RI/FS. If EPA disapproves (in writing) of a selected contractor or disapproves (in writing) of the Respondents, Respondents shall retain a different contractor or notify EPA that they will perform the work themselves (if Respondents have not already been disapproved by EPA) within five working days following EPA's disapproval and shall notify EPA of that contractor's name and qualifications, or notify EPA of Respondents' qualifications (if Respondents have not already been disapproved) within five working days of EPA's disapproval. If EPA subsequently disapproves (in writing) of the replacements, or if EPA determines at any time that the Respondents or their contractors will not properly and promptly perform the work, EPA reserves the right to terminate this Order and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondents. Respondents shall notify EPA of the names and qualifications of personnel who will carry out the the work at least five days before the personnel begin work under the Order. During the course of the RI/FS, Respondents shall notify EPA in writing of any changes or additions in the personnel used to carry out the work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove (in writing) changes and additions to personnel as it has hereunder regarding the initial notification.

39. Within five working days after the effective date of this Order, Respondents shall designate a Quality Assurance Official ("QAO"), independent of any work project contractor, and independent of the Project Coordinator, to conduct a quality assurance program during the Respondents' implementation of the work. The QAO may come from the Respondents' own staffs, from a contractor's organization, or from a private consulting entity. Respondents shall submit the designated QAO's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the QAO shall be present on OU4 or readily available during work on OU4. EPA retains the right to, at any time, disapprove (in writing) of any QAO named by the Respondents. If EPA disapproves of a selected QAO, Respondents shall retain a different QAO and shall notify EPA of that person's name, address, telephone number, and qualifications within five working days following EPA's disapproval.

EPA Review of Submissions

40. In all instances in which this Order requires a final submission of any kind (other than monthly progress reports described in Section XV (Progress Reports and Meetings), paragraph 62), from Respondents to EPA, the submission must be submitted in writing and in electronic form, and it must be accompanied by the following certification signed by an authorized officer of each of the Respondents:

"I certify, based upon my inquiry of those individuals responsible for producing the information, that the information contained in or accompanying this submission is true, accurate and complete. As to those identified portions of this submission for which I cannot personally verify the truth and accuracy, I certify as the official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. This certification shall not apply to wording contained herein that was inserted at the insistence of EPA over my written objection attached hereto."

41. For the purpose of this certification with respect to the Respondents, an "authorized officer" means a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar decision-making functions for the corporation.

42. EPA may ask others, who are not parties to this Order, to voluntarily provide remarks to EPA regarding any of Respondents' submissions. Such remarks are for EPA's information only, and have no other effect under this Order. Respondents shall provide copies of all submissions, that are prepared for EPA under this Order, to the ODEQ and to the Quapaw Tribe for their review. Respondents shall send these copies to the addresses provided in Section VIII (Notice). The EPA shall consider all written ODEQ and Quapaw comments that are timely⁴ submitted, as part of EPA's review of any submission. Upon EPA's request, Respondents shall provide copies of any of Respondents' submissions to other persons (in addition to the ODEQ and the Quapaw Tribe) identified by EPA.

⁴Only for the purposes of ODEQ and Quapaw Tribe comments submitted under this paragraph, comments are "timely" if they are submitted within seven working days for any document under 10 pages long, or within 15 working days for any document 10 pages or longer. Pursuant to 40 CFR § 300.515(h)(3), the ODEQ and the Quapaw Tribe will have a minimum of 10 working days and a maximum of 15 working days, from their receipt of the RI/FS report documents, to provide comments to EPA on the RI/FS report.

43. After review of any submission produced by Respondents, EPA⁵ may: (a) approve the submission; (b) approve the submission with modifications required by EPA which modifications may include, but may not be limited to, written passages prepared by EPA which passages Respondents shall incorporate, word-for-word, into the text of the submission as directed by EPA in writing, and which modifications may also include, but may not be limited to, EPA-required deletions of certain passages contained in the submission which deletions Respondents shall make, word-for-word, as directed by EPA in writing; (c) disapprove the submission and direct Respondents to resubmit the submission after incorporating EPA's modifications which modifications may include, but may not be limited to, written passages prepared by EPA which passages Respondents shall incorporate, word-for-word, into the text of the submission as directed by EPA in writing, and which modifications may also include, but may not be limited to, EPA-required deletions of certain passages contained in the submission which deletions Respondents shall make, word-for-word, as directed by EPA in writing; or (d) disapprove the submission and assume responsibility for performing all or any part of the work. As used in this Order, including but not limited to the SOW, the terms "approved by EPA," "approval by EPA," "EPA approval," or a similar term means the action described in (a) or (b) of this paragraph. Once approved by EPA in writing, as described in (a) or (b) of this paragraph, a submission shall be fully enforceable under this Order.

44. Failure of EPA to comment on, modify, approve, or disapprove Respondents' submissions will not constitute approval by EPA.

45. In the event of approval or approval with modifications by EPA, Respondents shall proceed to take any action required by the submission, as approved or modified by EPA. EPA may approve part of a submission, and notwithstanding any EPA notice of disapproval or approval with modifications regarding other parts of a submission, Respondents shall proceed, at the written direction of EPA, to take any action required by any EPA-approved portion of the submission, to the extent such action is not dependent upon the disapproved portion.

46. Upon receipt of a request for a modification under "(b)" of paragraph 43 or a notice of disapproval under "(c)" of paragraph 43, Respondents shall, within fourteen days or other longer time as specified by EPA in its notice of disapproval or request for modification, correct the EPA-identified deficiencies and resubmit the submission for approval.

⁵Before EPA sends any notification to Respondents, under (a),(b),(c) or (d) of this paragraph, EPA will consider timely comments provided by the ODEQ and the Quapaw Tribe regarding the draft notification. ODEQ and Quapaw Tribe comments are considered "timely" for the purposes of this paragraph if they are submitted within seven working days from the date the draft notification is sent to the ODEQ and the Tribe via email for any draft notification under 10 pages long, or within fifteen working days for any draft notification 10 pages or longer.

47. If any submission by Respondents is not approved by EPA, Respondents shall be in violation of this Order. That is, Respondents are in violation of this Order if EPA disapproves a submission under “(c)” or “(d)” of paragraph 43. However, notwithstanding any other part of this Order, stipulated penalties do not begin to accrue on a submission that is disapproved by EPA under “(c)” of paragraph 43 until the time EPA notifies the Respondents in writing that the submission in question is still deficient after the submission has been resubmitted as described in paragraph 46, unless Respondents fail to resubmit the submission within the time period described in paragraph 46 in which case stipulated penalties begin to run after the 14-day period has expired.

Work

48. Respondents shall perform the work described in this Order including without limitation the Statement of Work (Attachment 1) and including without limitation any EPA-approved submissions. Respondents are required to meet deadlines specified in this Order including the SOW, and Respondents are required to meet deadlines in EPA-approved submissions.

X. REIMBURSEMENT OF RESPONDENTS BY THE FEDERAL RESPONDENT

Notwithstanding any other provision of this Order, this section of the Order pertains only to the funding agreement established between Federal Respondent and Respondents, and, except as expressly provided in other sections of the Order, the terms of this section do not affect the other requirements of the Order, including without limitation payment requirements, set forth in the other sections of the Order.

49. The United States, on behalf of the Federal Respondent, agrees to pay to Respondents an amount equal to 50 percent of all Covered Response Costs. Payment under this paragraph shall be made as follows:

a. Within 90 days after the effective date of this Order, the United States, on behalf of the Federal Respondent, shall pay to Respondents the sum of \$1,000,000.

b. If the Covered Response Costs exceed \$2,000,000, Respondents may request further reimbursement by providing the Federal Respondent with the documentation described in subparagraph (f) below. Requests for further reimbursement under this subparagraph may be made up to twice each calendar year. Within 90 days following the later of

(i) the receipt by the Federal Respondent of the documentation as described in subparagraph (f) below, or (ii) the resolution of a dispute of costs under subparagraph (e) below, the United States shall pay to the Respondents the difference between (1) the amount already paid by the United States to the Respondents under this Agreement and (2) an amount equal to 50 percent of all Covered Response Costs.

c. Payments under this paragraph shall be made by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the below-designated account of the Respondents in accordance with current electronic funds transfer procedures which will be provided to Respondents by Federal Respondent.

d. In the event that a payment required under subparagraphs (a) or (b) is not made when due, interest on the unpaid balance shall be paid at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing either (1) for the payment under subparagraph (a), on effective date of this Order; or (2) for a payment under subparagraph (b), on the 91st day after the earlier of (i) the receipt of the documentation described in subparagraph (f) below, or (ii) the resolution of disputed costs under subparagraph (e), and accruing through the date of the payment.

e. If the Federal Respondent disputes any cost, it will notify the Respondents in writing within 90 days of receipt by the Federal Respondent of the documentation described in subparagraph (f) below. In the written notification of dispute, the Federal Respondent shall state with reasonable specificity the grounds for its dispute, the amount in dispute, and provide any other information that may be useful to resolve the dispute. If any costs are partially disputed, the non-disputed portion shall be paid consistent with subparagraphs (b), (c), and (d) of this paragraph. The Respondents and Federal Respondent agree to work in good faith to resolve all disputed costs within a reasonable time after the Respondents receive the written notification of dispute from the Federal Respondent. Disputed costs shall be due and payable in spite of the ongoing resolution process..

f. As documentation of the Covered Response Costs incurred, the Respondents agrees to provide to Mr. John Dalgarn, Environmental Protection Specialist, at Bureau of Indian Affairs Miami Field Office, P.O. Box 391, Miami, OK 74256, the following:

1. Contemporaneously with their creation or original transmission, copies of all reports, communications, drafts, plans, cost estimates, invoices and other documentation that the Respondents receive from, requests of or otherwise causes to be prepared by any contractor hired to assist the Respondents to perform the AOC Work, and copies of all

written communications to EPA from the Respondents or any representative thereof with regard to the Respondents' performance of the AOC work; and

2. If the Respondents seek payments under subparagraph (b), the Respondents shall provide to the Federal Respondent:

A. A certification that all monies previously paid by the United States pursuant to subparagraphs (a) and (b) were used for payment of, or reimbursement for, Covered Response Costs; and

B. A chronological summary of all Covered Response Costs that the Respondents claim to have incurred, copies of all supporting invoices arranged in chronological order, and records of payment of each such invoice, for all Covered Response Costs, whether reimbursed under subparagraphs (a) or (b).

3. Each time that the Respondents sends any documentation, requests for payment and/or any other materials to the Federal Respondent under this paragraph, the Respondents shall send a copy of the cover letter (without enclosures) to the persons listed in Paragraph 72(c):

g. Respondents and Federal Respondent expressly acknowledge that this Order does not establish, either actually or presumptively, the appropriate final allocation among the Respondents and Federal Respondent of any costs at the Site. Nonetheless, as between themselves (*i.e.*, between Respondents and Federal Respondent), and for purposes of the work under this AOC, the allocation is final and no amount of the \$1,000,000 will be returned or credited to the Federal Respondent. Respondents and Federal Respondent reserve their rights to seek to pay each other a lesser percentage of costs other than the Covered Response Costs. This Order shall not be offered or used as precedent or evidence of what the appropriate final allocation of future remedial work should be.

50. Any payments made by the United States pursuant to this Order are subject to the availability of appropriated funds. Nothing in this Order shall be interpreted as, or shall constitute, a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

XI. BASELINE RISK ASSESSMENT

51. EPA will perform the Baseline Risk Assessment part of the Remedial

Investigation including both a human health Baseline Risk Assessment and an ecological Baseline Risk Assessment, but Respondents shall support EPA by providing site characterization information as provided in this Order including without limitation the SOW. Respondents shall pay EPA for EPA's Baseline Risk Assessment costs as provided in Section XXIII (Special Account for Response Costs). The major components of the human health Baseline Risk Assessment include contaminant identification, exposure assessment, toxicity assessment, and human health risk characterization. The major components of the ecological Baseline Risk Assessment include contaminant identification, exposure assessment, toxicity assessment, and ecological risk characterization. In both the human health Baseline Risk Assessment and the ecological Baseline Risk Assessment, EPA will consider Indian practices in calculating risk. Respondents shall not wait until EPA has finished the Baseline Risk Assessment to begin drafting the Feasibility Study Report. EPA will provide sufficient information concerning the baseline risks such that Respondents can begin drafting the Feasibility Study Report. EPA will provide this information in two draft Baseline Risk Assessment memoranda. One EPA draft memorandum will generally include a list of the chemicals of concern for human health and ecological effects, and the corresponding toxicity values. The other EPA draft memorandum will list the current and potential future exposure scenarios, exposure assumptions, and exposure point concentrations that EPA plans to use in the Baseline Risk Assessment. EPA will release these two draft memoranda to the public including without limitation the Respondents for comment. However, EPA need only respond to significant comments that are submitted during the formal public comment period for the Proposed Plan and the RI/FS as required under 40 CFR § 300.430(f)(3).

52. After considering any significant comments received on the two memoranda, EPA will prepare a Baseline Risk Assessment report based on the data collected by Respondents during the site characterization. EPA will release this report to the public at the same time it releases the final RI report. Both reports will be put into the administrative record for OU4.

53. EPA will respond to all significant comments on the memoranda or on the Baseline Risk Assessment report that are resubmitted during the formal comment period on the Proposed Plan, in the Responsiveness Summary of the Record of Decision in a manner consistent with 40 CFR § 300.430(f)(3).

XII. MODIFICATION OF THE WORK PLAN

54. If at any time during the implementation of this Order, Respondents identify a need for additional data gathering or other work, Respondents shall submit a written proposal to

EPA (with copies to ODEQ and the Quapaw Tribe) within 20 days of identification. In the proposal, the Respondents shall describe the additional data needs or other work needs, describe the plan to collect or generate the additional data or to perform additional work, identify specific changes or additions to relevant EPA-approved plans, and describe necessary schedule modifications. After review of any proposal, and after consideration of the timely⁶ comments of the ODEQ and the Quapaw Tribe, EPA may: (a) approve the proposal; (b) approve the proposal with modifications required by EPA which modifications may include, but may not be limited to, written passages prepared by EPA which passages Respondents shall incorporate, word-for-word, into the text of the proposal as directed by EPA in writing, and which modifications may also include, but may not be limited to, EPA-required deletions of certain passages contained in the proposal which deletions Respondents shall make, word-for-word, as directed by EPA in writing; or (c) disapprove the proposal. If EPA approves the proposal or approves the proposal with modifications and Respondents make those modifications to EPA's satisfaction, then the proposal shall become final and it shall be an enforceable part of this Order.

55. If EPA determines that, in addition to the work defined in the EPA-approved work plan, other work is necessary to complete the RI/FS, EPA will notify the Respondents in writing. EPA may require that Respondents perform this additional work in addition to the work required by the work plan that was initially approved by EPA, including any approved modifications, if EPA determines that such work is necessary for a complete RI/FS. Respondents shall confirm their willingness to perform the additional work in writing to EPA within seven days of their receipt of the EPA notice, or Respondents may invoke dispute resolution. If Respondents are willing to complete the additional work, or are required to do the additional work after dispute resolution, they shall, within 30 days of EPA's notice or within 30 days of the conclusion of dispute resolution, submit a work plan for the additional work to EPA for EPA review and approval. Once EPA has approved this work plan for the additional work under the provisions of paragraph 43, the Respondents shall perform the additional work according to the schedules and performance standards described in the EPA-approved work plan, subject to the dispute resolution provisions of this Order. The EPA-approved work plan for the additional work shall be an enforceable part of this Order. Should Respondents refuse to conduct the additional work or fail to do so in a satisfactory manner, EPA reserves the right to conduct the work itself at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

⁶ODEQ and Quapaw Tribe comments are considered "timely" for the purposes of this paragraph if they are submitted within seven working days from the date of the Respondents' written proposal for any written proposal under 10 pages long, or within fifteen working days for any written proposal 10 pages or longer.

XIII. QUALITY ASSURANCE

56. Respondents shall ensure that all sampling and analysis that Respondents perform pursuant to this Order conform to an EPA-approved quality assurance project plan (QAPP) that Respondents shall develop under the SOW. Respondents shall ensure that all sampling and analysis that Respondents perform pursuant to this Order conform to EPA guidance documents regarding sampling and analysis, quality assurance and quality control (QA/QC), data validation, and chain of custody procedures including without limitation: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08; "Data Quality Objectives for Remedial Response Actions," EPA 540/G-87/003a, OSWER Directive Number 9335.0-7b; and any other guidance document identified in the SOW or in any EPA-approved submission. Respondents must ensure that field personnel used by Respondents are properly trained in the use of field equipment and in chain of custody procedures. Respondents shall only use laboratories which have a documented quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) to meet the quality system requirements.

57. To provide quality assurance and maintain quality control regarding all samples collected pursuant to this Order, Respondents shall:

- (a) Ensure that all contracts with laboratories utilized by Respondents for analysis of samples taken in accordance with this Order provide for access of EPA personnel and EPA authorized representatives.
- (b) Ensure that all laboratories utilized by Respondents for analysis of samples taken in accordance with this Order perform analyses according to EPA methods or alternative methods satisfactory to EPA.
- (c) Ensure that all laboratories utilized by Respondents for analysis of samples taken in accordance with this Order participate in an EPA or EPA-approved QA/QC program. Respondents shall ensure that, as part of the QA/QC program and upon request by EPA, such laboratories shall

perform, at no expense to EPA, analyses of samples provided by EPA to demonstrate the quality of each laboratory's data.

XIV. FINAL RI/FS, PROPOSED PLAN, PUBLIC COMMENT, RECORD OF DECISION, ADMINISTRATIVE RECORD

58. EPA retains the responsibility for the approval and release to the public of the RI/FS report. EPA retains responsibility for the preparation and release to the public of the proposed plan and record of decision in accordance with CERCLA and the NCP.

59. EPA will provide Respondents with copies of the final RI/FS report, proposed plan and record of decision.

60. Consistent with the NCP, 40 CFR Part 300, EPA will determine the contents of and compile the administrative record file for selection of the remedial action. In addition to any submissions required by the Order including without limitation submissions required by the SOW or submissions required by EPA-approved submissions, Respondents shall submit to EPA other incidental documents developed during the course of the RI/FS upon which selection of the response action may be based. Respondents shall submit these other incidental documents to EPA within ten days of the completion of such documents unless an EPA-approved submission requires Respondents to submit such other incidental documents at a different time in which case the schedule in the EPA-approved submission is dispositive. These other incidental documents include without limitation task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, chain-of-custody forms, and laboratory analytical reports. Respondents shall also submit, within 14 days of the effective date of this Order, any studies that predate the effective date of this Order, conducted under state, local or other federal authorities, relating to selection of the response action. Respondents shall also submit, within seven days of the date such documents are created, all documents relating to communications between Respondents and state, local or other federal authorities concerning selection of the response action. Within 30 days of Respondents' receipt of EPA's written notice, Respondents shall establish a community information repository on or near OU4 to house one copy of the administrative record file for the Site including without limitation the administrative record file for OU4. Respondents shall ensure that the repository has adequate lighting, is heated and air-conditioned, and that it includes desks and chairs at which the administrative record may be reviewed. Respondents shall ensure that the repository includes a copier at which the administrative record file may be copied.

XV. PROGRESS REPORTS AND MEETINGS

61. Upon 14 days prior written notice from EPA, Respondents shall make presentations at, and participate in, meetings at the request of EPA. Respondents shall prepare

presentations regarding topics that include without limitation technical aspects of the RI/FS. Meetings will be scheduled at EPA's discretion. The EPA will provide the Quapaw Tribe and the ODEQ with notice of all meetings and provide them with an opportunity to participate in all meetings.

62. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every thirty days (*i.e.*, monthly) after the effective date of this Order until termination of this Order, unless otherwise directed by a RPM in writing. Respondents shall include the following in these reports: (a) descriptions of all significant developments that took place during the reporting period, including the work performed and any problems encountered, (b) a list that indicates the percent of completion for each RI/FS task described in the SOW, (c) results of sampling and tests and all other data received by Respondents, (d) an index of raw data collected during the reporting period, (e) developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

XVI. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

63. EPA will make available to Respondents validated data generated by EPA in accordance with this Order unless the data are exempt from disclosure under any federal or state law or regulation.

64. Respondents shall orally notify EPA, the ODEQ, and the Quapaw Tribe at least 15 days before conducting field work including without limitation any sampling. At EPA's, ODEQ's, or the Quapaw Tribe's oral or written request, Respondents shall allow split or duplicate samples to be taken by EPA, ODEQ, and the Quapaw Tribe (and by EPA's authorized representatives) of any samples collected by Respondents in implementing this Order.

65. If any property to which access is necessary to undertake the work called for in this Order (including without limitation EPA-approved submissions) is owned by parties (including without limitation Indians) other than Respondents, Respondents shall obtain, or use their best efforts to obtain, written access agreements that provide access to that property, within 30 days of an identified need to perform work on a particular parcel. Such agreements must provide access for EPA, its contractors and oversight officials, the ODEQ and its contractors, the Quapaw Tribe and its contractors, and the Respondents and their authorized representatives, and such agreements must specify that Respondents are not EPA's representative with respect to liability associated with work undertaken under this Order or otherwise. Respondents shall provide a copy of the pertinent access agreement to EPA before

Respondents' initiation of field work on any parcel that is the subject of an access agreement. Respondents' best efforts include providing reasonable compensation for access. If any access agreements are not obtained within 30 days of an identified need to perform work on a particular parcel, Respondents shall immediately notify EPA of their failure to obtain access. If Respondents cannot obtain an access agreement to a piece of property where work is to be completed under this Order, EPA may obtain access for Respondents, or EPA may obtain access for itself and perform the work that was to take place on the property in question, or EPA may terminate the Order. If EPA performs the work that was to take place on the property to which Respondents were not able to obtain access, Respondents shall reimburse EPA for all costs paid by EPA in performing such work under the provisions of Section XXIII (Special Account for Response Costs). Respondents additionally must integrate the results of any such work undertaken by EPA into Respondents' deliverables including without limitation submissions. Furthermore, Respondents shall indemnify the United States as specified in Section XXVII (Financial Assurance, Insurance, and Indemnification) of this Order. In accordance with Section XXIII (Special Account for Response Costs), Respondents also must reimburse EPA for all costs and attorney fees incurred by the United States to obtain access for Respondents.

66. At all reasonable times, Respondents shall provide access for EPA, its contractors and oversight officials, the ODEQ and its contractors, and the Quapaw Tribe and its contractors at all property where Respondents or their agents and contractors perform work under this Order, and this access shall allow EPA, its contractors and oversight officials, the ODEQ and its contractors, and the Quapaw Tribe and its contractors to enter and freely move about for purposes which include without limitation the following: (a) inspecting conditions, work, records, operating logs, and contracts related to OU4 or to Respondents and their contractors; (b) reviewing the progress of Respondents in carrying out the work under the terms of this Order; (c) conducting tests as EPA or its contractors and oversight officials deem necessary; (d) using a camera, sound recording device or other documentary type equipment; and (e) verifying the data submitted to EPA by the Respondents. Respondents shall allow EPA, its contractors and oversight officials, the ODEQ and its contractors, and the Quapaw Tribe and its contractors to inspect and copy all documents and information including without limitation records, files, photographs, sampling and monitoring data, and other writings related to work undertaken in carrying out this Order. Nothing in this Order limits or affects EPA's right of entry or inspection authority under federal law. All parties with access to the Site under this paragraph must comply with all EPA-approved health and safety plans. At all reasonable times, Federal Respondent shall provide access for Respondents and their contractors, for EPA, its contractors and oversight officials, for the ODEQ and its contractors, and the for the Quapaw Tribe and its contractors at all Site property controlled, managed, or held in trust (including allotted Indian land) by DOI and its associated bureaus and agencies including the Bureau of Indian Affairs, for

the purposes described in the first sentence of this paragraph.

67. The Respondents may assert a claim of business confidentiality covering part or all of the information submitted to EPA in accordance with the terms of this Order, under 40 CFR Section 2.203, provided Respondents' claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Respondents must assert any such claim in the manner described by 40 CFR Section 2.203(b), and Respondents must substantiate their claim at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 CFR Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA, the ODEQ, or the Quapaw Tribe without further notice to Respondents. Respondents agree not to assert confidentiality claims with respect to any data related to Site (including without limitation OU4) conditions, sampling, or monitoring.

68. In entering into this Order, Respondents agree not to object to any data gathered, generated, or evaluated by EPA, by the ODEQ, by the Quapaw Tribe, or by Respondents in the performance or oversight of the work, if the data has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Order including without limitation any EPA-approved submissions such as work plans or sampling and analysis plans. If Respondents object to any other data relating to the RI/FS, Respondents must submit to EPA a report that identifies and explains their objections, describes all acceptable uses of the data, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days of the monthly progress report containing the data.

XVII. DESIGNATION OF PROJECT COORDINATOR AND RPMS

69. Within five working days after the effective date of this Order, the Respondents shall designate one Project Coordinator who shall be responsible for administration of all the Respondents' work. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on OU4 or readily available during work on OU4. EPA retains the right to, at any time, disapprove of any Project Coordinator named by the Respondents. If EPA disapproves of a selected Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within five working days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondents.

70. Respondents shall have the right, subject to the immediately preceding paragraph,

to change their designated Project Coordinator. Respondents shall notify EPA, five working days before such a change is made. The initial notification of a change in Respondents' Project Coordinator may be orally made, but it shall be promptly followed by a written notice.

71. EPA has designated Ms. Ursula Lennox and Mr. Mike McAteer of the EPA Region 6 Superfund Division, as its Remedial Project Managers (“RPM”). EPA’s RPMs each have the authority lawfully vested in a RPM and On-Scene Coordinator (OSC) by the NCP. In addition, the RPMs each have the authority, consistent with the NCP, to halt any work required by this Order, and to take any necessary response action upon determining that conditions at OU4 may present an immediate and substantial endangerment to public health or welfare or the environment. The absence of a RPM from OU4 is not cause for the stoppage or delay of Respondents’ work. EPA may change its RPMs. EPA will notify Respondents five working days before any such change is made. The initial notification of a change in RPM(s) may be orally made, but it will be promptly followed by a written notice. Each RPM has the entire authority provided to the RPM under this order. That is, only one RPM is necessary to take any of the RPM actions or make any of the RPM approvals described herein.

72. Respondents shall direct all submissions required by this Order to the RPMs at the addresses listed below in this paragraph (with copies to ODEQ and to the Quapaw Tribe at their respective addresses also listed below) . Respondents shall send all submissions to the RPMs (and to the ODEQ and the Quapaw Tribe) in electronic form (using WordPerfect for EPA and Word for the ODEQ and Quapaw Tribe) by email, and Respondents shall also send all submissions in hard copy by overnight express mail or by certified mail with return receipt requested. To the greatest extent possible, communications between Respondents and EPA should be directed to the Project Coordinator and RPM, in writing at the respective addresses which follow:

- (a) Documents to be submitted to EPA should be sent to:

Ursula Lennox (6SF-LP)
Remedial Project Manager
EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
(One Copy)

and to

Mike McAteer (6SF-LP)
Remedial Project Manager
EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
(One Copy)

- (b) Documents to be submitted to Respondents should be sent to:

Ms. Terrance Gileo Faye
Bapst, Calland, Clements, and Zomnir, P.C.
1 North Maple Avenue
Greensburg, PA 15601
(One Copy)

Mr. Gary Uphoff
Environmental Management Services Company
5934 Nicklaus Drive
Fort Collins, CO 80528
(One Copy)

Respondents must notify EPA in writing of any change in this address.

- (c) Documents to be submitted to Federal Respondent should be sent to:

For the United States Department of Interior:

Mr. John Dalgarn
Environmental Protection Specialist
Bureau of Indian Affairs
Miami Field Office
P.O. Box 391
Miami, OK 74255

For the United States Department of Justice:

Mr. Scott J. Jordan
Environmental Defense Section

U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

- (d) Copies of submissions should be sent to the ODEQ at:

Mr. Dennis Datin, P.E.
Project Manager
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677
(two hard copies and one electronic copy of drafts; one hard copy and one read-only electronic copy of finals)

- (e) Copies of submissions should be sent to the Quapaw Tribe at:

Mr. John L. Berrey, Chairman
Attn: Ms. Tabitha Worley, Environmental Director
Quapaw Tribe of Oklahoma
P.O. Box 765
Quapaw, OK 74363-0765
(One Copy)

Mr. Jason Aamodt, Esq.
General Counsel
The Quapaw Tribe of Oklahoma
1645 South Cheyenne Ave.
Tulsa, OK 74199

73. EPA will arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). The oversight assistant may observe work and make inquiries in the absence of EPA, but is not authorized to modify the work plan.

XVIII. OTHER APPLICABLE LAWS

74. Respondents shall comply with all applicable local, state, and federal laws and regulations when performing the RI/FS. No local, state, or federal permit is required for any portion of any action conducted entirely on the Site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621.

XIX. RETENTION OF RECORDS

75. All records and documents in Respondent's possession that relate in any way to the Site shall be preserved during the conduct of this Order and for a minimum of 10 years after commencement of construction of any remedial action. The Respondents shall acquire and retain copies of all records and documents that relate to the Site and are in the possession of their employees, agents, accountants, contractors, or attorneys. After this 10-year period, the Respondents shall notify EPA at least 90 days before the records and documents are scheduled to be destroyed. If EPA requests that the records and documents be saved, the Respondents shall, at no cost to EPA, send EPA the records and documents or copies of the records and documents. Each Respondent hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927. The Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege, they shall provide the EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of the Order shall be withheld on the grounds that they are privileged.

76. The United States acknowledges that Federal Respondent (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA Region 6 requests for information related to the Site pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XX. DISPUTE RESOLUTION

77. Any disputes concerning work required under this Order for which dispute resolution has been expressly provided for, shall be resolved as follows: If the Respondents object to any EPA notice of disapproval or EPA interpretation of a requirement made pursuant to this Order, Respondents shall notify one of EPA's RPMs in writing of their objections within 14 days of receipt of the disapproval notice or requirement. Respondents' written objections shall define the dispute, state the basis of Respondents' objections, and shall be sent to EPA via overnight express mail or via fax to (214) 665-6660. EPA and the Respondents then have an additional 14 days from EPA's receipt of the Respondents' objections to reach agreement. If an agreement is not reached within 14 days, Respondents may request a determination by EPA's Branch Chief for the Louisiana, New Mexico, Oklahoma Branch. The Branch Chief's determination is EPA's final decision. Respondents shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If the Respondents do not agree to perform or do not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from the Respondents, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

78. Respondents are not relieved of their obligations to make payments or perform work (including without limitation deliverables) according to the schedule set forth in the Order (including without limitation the SOW or EPA-approved submissions) while a matter is pending in dispute resolution; however, performance of work (but not payments of Response Costs) with respect to the specific matters in dispute are stayed during the pendency of Dispute Resolution. That is, Respondent shall, during the pendency of a dispute, continue to perform all work, except for the work directly and specifically in dispute, and Respondents shall continue to make payments of Response Costs during the pendency of a dispute. The invocation of dispute resolution does not stay stipulated penalties nor does it stay the accumulation of Interest under this Order.

XXI. DELAY IN PERFORMANCE/STIPULATED PENALTIES

79. For each day that Respondents fail to make a payment or fail to complete a deliverable according to the schedules in the Order, including without limitation the SOW and EPA-approved submissions, or fail to produce a deliverable that is acceptable to EPA, or Respondents otherwise fail to perform in accordance with the requirements of this Order, Respondents shall be in violation of the Order and Respondents shall be liable for stipulated penalties. Penalties begin to accrue on the day that a violation occurs, and extend through the

period of correction. Respondents are in violation of this Order if EPA disapproves a submission under “(c)” or “(d)” of paragraph 43, and stipulated penalties shall accrue as described in paragraph 47. EPA will provide written notice for violations that are not based on timeliness; nonetheless, penalties will accrue from the day a violation occurs. Respondents shall pay all stipulated penalties within 30 days of Respondents’ receipt of a demand letter from EPA.

80. Respondents shall pay Interest on any unpaid penalty balance. Respondents shall further pay a handling charge of 1 percent of the unpaid penalty balance, to be assessed at the end of each 31-day period, and a 6 percent per annum penalty charge, to be assessed if the penalty balance is not paid in full within 90 days after it is due.

81. Respondents shall mail all payments to:

EPA Superfund - Tar Creek Superfund Site (06JW)
CERCLIS #: OKD980629844
Superfund Accounting
P.O. Box 360582M
Pittsburgh, Pennsylvania 15251
ATTN: COLLECTION OFFICER FOR SUPERFUND

Respondents shall pay by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Respondents shall reference the "Tar Creek Superfund Site OU4 (06JW), CERCLIS #: OKD980629844," the name and address of the Respondents, and the words "EPA Docket Number CERCLA 6-03-01 Stipulated Penalties" on each check. Respondents shall forward a copy of the check and any transmittal letter to the RPMs and to:

Chief, Superfund Cost Recovery Section (6SF-AC)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

The amounts to be paid by the Respondents pursuant to this Section shall be deposited in the EPA Hazardous Substance Superfund.

82. For violations associated with any one of the following deliverables (including without limitation Respondents’ failure to meet deadlines including deadlines in the SOW and in schedules in EPA-approved submissions) or payments, Respondents shall pay stipulated

penalties which shall accrue in the amount of \$1500 per day, per violation, for the first seven days of noncompliance; \$2500 per day, per violation, for the eighth through fourteenth days of noncompliance; \$5000 per day, per violation, for the fifteenth through the thirtieth days of noncompliance; and \$8000 per day, per violation, for all violations lasting beyond thirty days:

- a) Revised Work Plan for the Beaver Creek RI/FS Project;
- b) Revised Draft Remedial Investigation Report for the Tribal RI/FS Pilot Project;
- c) Scoping Phase Report;
- d) Candidate Technologies Report for Treatability Studies;
- e) Sampling and Analysis Plan;
- f) OU4 Health and Safety Plan;
- g) Community Relations Plan
- h) RI/FS Work Plan
- i) Preliminary Site Characterization Summary
- j) RI Report
- k) Treatability Studies Work Plan
- l) Treatability Study Sampling and Analysis Plan
- m) Treatability Studies Evaluation Report
- n) Development and Screening of Remedial Alternatives Report
- o) Proposal of Refinements of the Preliminary Remedial Action Objectives
- p) Feasibility Study Report
- q) Quality Assurance/Quality Control plans

- r) Failure to make timely payments under the provisions of paragraphs 92 through 96

83. For violations associated with any one of the following deliverables (including without limitation Respondents' failure to meet deadlines including deadlines in the SOW and in schedules in EPA-approved submissions), Respondents shall pay stipulated penalties which shall accrue in the amount of \$1000 per day, per violation, for the first week of noncompliance; \$2000 per day, per violation, for the eighth through fourteenth days of noncompliance; \$3000 per day, per violation, for the fifteenth through the thirtieth days of noncompliance; and \$5000 per day, per violation, for all violations lasting beyond thirty days:

- a) Literature Survey Report;
- b) Treatability Study Health and Safety Plan;
- c) Data Security System

84. For the monthly progress reports and for any other work (not listed above in paragraphs 82 or 83) that Respondents are required to perform or payments that Respondents are to make under the Order (except for the payments described in paragraph 82(r)) including without limitation the SOW and EPA-approved submissions, Respondents shall pay stipulated penalties which shall accrue in the amount of \$500 per day, per violation, for the first week of noncompliance; \$1000 per day, per violation, for the eighth through fourteenth days of noncompliance; \$2000 per day, per violation, for the fifteenth through the thirtieth days of noncompliance; and \$4000 per day, per violation, for all violations lasting beyond thirty days.

85. Respondents may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XX (Dispute Resolution). Penalties will accrue but need not be paid during the dispute resolution period. If Respondents do not prevail upon resolution, all penalties are due to EPA within 30 days of resolution of the dispute and the provisions of paragraph 80 apply to unpaid balances. If Respondents prevail upon resolution, the penalties at issue in the dispute resolution need not be paid.

86. Notwithstanding any other part of this Order, with respect to any submission that is disapproved by EPA under "(c)" or "(d)" of paragraph 43, if EPA notifies Respondents in writing that EPA has decided that Respondents need not make any correction to the disapproved submission and that corrections may be made in a subsequent related submission, any stipulated penalties will cease to accrue on the date of EPA's decision as indicated in the

written notice.

87. The stipulated penalty provisions of this Order do not preclude EPA from pursuing any other remedies or sanctions available to EPA due to Respondents' failure to comply with this Order, including without limitation the completion of all or part of the RI/FS by EPA. Payment of stipulated penalties does not alter Respondents' obligation to complete the requirements of this Order.

XXII. FORCE MAJEURE

88. "Force majeure," for purposes of this Order, is defined as any event arising from causes beyond the control of the Respondents, of any entity controlled by Respondents, or of Respondents' contractors, that delays or prevents the performance of any requirement of this Order despite Respondents' best efforts to fulfill the requirement. The requirement that the Respondents exercise "best efforts to fulfill the requirement" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the work or a failure to attain the Performance Standards.

89. If any event occurs or has occurred that may delay Respondents' performance of any requirement of this Order, whether or not caused by a force majeure event, the Respondents shall notify orally a RPM or, in the absence of both RPMs, the Director of the Superfund Division, EPA Region 6 [Address: Superfund Division Director ((6SF), U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, TX 75202-2733] within five days of when Respondents first knew that the event might cause a delay. Within five days thereafter, Respondents shall provide in writing to EPA an explanation and description of: the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Respondents' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of force majeure for that event for the period of time of such failure to meet a requirement of the Order, and for any additional delay caused by such failure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondent's contractors knew or should have known.

90. If EPA, agrees that the delay or anticipated delay in Respondents' performance of a requirement is attributable to a force majeure event, the time for performance of the requirements under this Order that are affected by the force majeure event will be extended by EPA, for such time as is necessary to complete those requirements. An extension of the time for performance of the requirements affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Respondents in writing of the length of the extension, if any, for performance of the requirements affected by the force majeure event.

91. If the Respondents elect to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), they shall do so no later than 14 days after receipt of EPA's notice. In any Dispute Resolution proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs 88 and 89, above. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected requirement of this Order identified to EPA.

XXIII. SPECIAL ACCOUNT FOR RESPONSE COSTS

92. In accordance with Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), Respondents shall provide funds to EPA, according to the procedures and time frames described in this Section, for the payment of Response Costs except for Past Response Costs. EPA will establish a reimbursable special account (the "Tar Creek OU4 Special Account for RI/FS") to retain those funds, which EPA will use for the payment of Response Costs except for Past Response Costs. Respondents shall also pay Interest on any late payment.

93. EPA has estimated that the amount of Response Costs that will be expended by EPA at OU4 (after the effective date) during the RI/FS on an annual basis will be \$360,000. Within 30 days of the effective date of this Order, Respondents shall pay \$360,000 to be deposited in the Tar Creek OU4 Special Account for RI/FS by Electronic Funds Transfer ("EFT"), in accordance with EFT instructions provided by EPA, or by submitting a certified or cashier's check made payable to "EPA Hazardous Substance Superfund" to:

EPA Superfund - Tar Creek Superfund Site (06JW)
CERCLIS #: OKD980629844
Superfund Accounting
P.O. Box 360582M
Pittsburgh, Pennsylvania 15251
ATTN: COLLECTION OFFICER FOR SUPERFUND

Respondents shall reference the "Tar Creek Superfund Site OU4 (06JW), CERCLIS #: OKD980629844," the name and address of the Respondents, the words "EPA Docket Number CERCLA 6-03-01 Tar Creek OU4 Special Account for RI/FS" on each check. Respondents shall forward a copy of the check and any transmittal letter to the RPMs and to:

Chief, Superfund Cost Recovery Section (6SF-AC)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

94. Whenever the Tar Creek OU4 Special Account for RI/FS is drawn down by EPA to a balance of approximately \$50,000, EPA will send a notice to Respondents and, if warranted, will provide an adjusted estimate of Response Costs to be expended in the next 12 months by EPA. In addition, EPA will submit to Respondents an accounting summary of Response Costs

paid (debited) from the Tar Creek OU4 Special Account for RI/FS since the effective date. The Response Costs accounting summary shall be in the form of an unreconciled SCORPIOS cost summary report or some equivalent unreconciled EPA accounting summary. If Respondents need more detailed information about a specific cost summarized on the SCORPIOS Report, Respondents may notify in writing the RPMs to inquire about the specific details. The RPMs will, within 14 days of such notice, attempt to provide the requested information. After the expiration of this 14-day period, Respondents may request that EPA prepare and certify a Response Cost accounting of some or all Response Costs paid since the effective date. The EPA's cost of preparing the certified Response Cost accounting is a Response Cost payable from the Tar Creek OU4 Special Account for RI/FS.

95. Respondents shall, within 30 days of receipt of a notice and Response Cost accounting summary (*i.e.*, the SCORPIOS report or its equivalent) in accordance with the procedure described in the preceding paragraph, remit to the Tar Creek OU4 Special Account for RI/FS the amount EPA identifies as necessary to replenish the Tar Creek OU4 Special Account for RI/FS to a balance of \$360,000 or to replenish the account to a balance of EPA's adjusted estimate of Response Costs to be expended within the next 12 months (whichever amount is less). Respondents shall make such payments according to the procedures described in paragraph 93 including without limitation the procedures for providing notice of remittance. Neither dispute resolution nor a request to the RPMs for more detailed information nor a request for a certified cost accounting shall delay the date that Respondents' payments are due under this paragraph.

96. Whenever the Tar Creek OU4 Special Account for RI/FS is depleted to an amount of \$15,000 or less at the time EPA submits a notification and cost accounting summary to Respondents as provided in paragraph 94, Respondents shall pay, within ten days of EPA's notice, \$50,000 to the Tar Creek OU4 Special Account for RI/FS in accordance with the procedure described in Paragraph 93 including without limitation the procedure for providing notice of the remittance. Respondents shall remit the remaining amount (in addition to the \$50,000) to replenish the Tar Creek OU4 Special Account for RI/FS to \$360,000 or to the amount of EPA's adjusted estimate of the next 12 months of Response Costs (whichever amount is less) in accordance with the procedures and time frames described in Paragraphs 94 and 95.

97. EPA will remit and return to Respondents the difference between any balance that remains on the date of termination of this Order in the Tar Creek OU4 Special Account for RI/FS and the most recent 12-month estimate of Response Costs provided by EPA under paragraph 94. That is, if the balance on the date of termination is greater than the last 12-month Response Costs estimate, EPA will remit the difference between the balance and the estimate to the

Respondents. Termination and satisfaction of the terms of this Order will be in accordance with Section XXIX (Termination and Satisfaction). EPA's obligation to return funds to Respondents from the Tar Creek OU4 Special Account for RI/FS shall terminate upon EPA's assumption of performance of any portion of the work pursuant to Paragraphs 38, 55, 65, or 77.

98. Respondents may invoke the Dispute Resolution provisions of this Order regarding Response Costs only after Respondents have made an inquiry, regarding the costs in question, to the RPMs as described in Paragraph 94, and the 14-day period in which the RPMs are to respond has expired. Respondents shall limit any disputes concerning Response Costs to disputes regarding accounting errors and regarding EPA's payment of costs unrelated (directly or indirectly) to this Order. Notwithstanding any other provision of this Order, in any dispute resolution concerning Response Costs, Respondents bear the burden of establishing an EPA accounting error or the inclusion of costs unrelated, directly or indirectly, to the Order. If Respondents prevail in dispute resolution regarding response costs, EPA will adjust the Tar Creek OU4 Special Account for RI/FS to reflect the amount determined in the resolution of the dispute.

XXIV. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

99. EPA reserves the right to perform its own studies and to terminate this Order, or take over, undertake, or redo work required hereunder, to seek reimbursement for the costs of such actions from Respondents and Federal Respondents (or others), and to seek any other appropriate relief including but not limited to, taking civil or administrative actions for performance of Respondents' and/or Federal Respondents obligations under this Order.

100. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of costs related to other operable units of the Site, for recovery of all Response Costs (including without limitation Past Response Costs) incurred by the United States at the Site (including without limitation OU4) that are not reimbursed by Respondents, for recovery of any costs incurred in the event EPA performs the RI/FS or any part of it, and for recovery of any future costs incurred by the United States in connection with response activities conducted at the Site including without limitation OU4. This Order is without prejudice to any of EPA's rights to recover from Respondents and Federal Respondent costs related to other operable units of the Site, Response Costs (including without limitation Past Response Costs) incurred by the United States at the Site (including without limitation OU4) that are not reimbursed by Respondent and Federal Respondent, costs incurred in the event EPA performs the RI/FS or any part of it, and any future costs incurred by the United States in connection with response activities conducted at the Site including without limitation

OU4, and EPA reserves its right to recover such costs from Respondents and Federal Respondent under applicable laws including without limitation CERCLA Section 107, 42 U.S.C. § 9607.

101. EPA reserves the right to bring an action against Respondents to enforce the response cost reimbursement requirements of this Order, to collect stipulated penalties assessed pursuant to Section XXI (Delay in Performance/Stipulated Penalties), and to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609. Notwithstanding any other provision of this Order, the United States reserves, and this Order is without prejudice to, any and all claims that it may have with respect to liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments

102. Except as expressly provided in this Order, each party to this Order reserves all rights and defenses it may have. Nothing in this Order affects EPA's removal or remedial authority or EPA's response or enforcement authorities, including the right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

103. After satisfying the requirements of this Order, Respondents and Federal Respondent will have resolved their liability to EPA for the work performed by Respondents pursuant to this Order. Respondents and Federal Respondent are not released from liability, if any, for any EPA response actions (and the associated costs) taken beyond the scope of this Order regarding removals, CERCLA response actions at other operable units of the Site, remedial design, remedial action, or operation and maintenance for OU4, or activities arising pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

104. The EPA agrees that the Respondents and Federal Respondent are entitled, as of the effective date of this Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Order. The "matters addressed" in this Order are the Work including without limitation the RI/FS for OU4, and payments that the Respondent and Federal Respondent make to EPA for Response Costs. The "matters addressed" in this Order do not include past Response Costs as defined herein, nor do they include costs or response actions as to which the United States including without limitation EPA has reserved its rights under this Order (except for claims for failure to comply with this Order), in the event that the United States asserts rights against Respondents or Federal Respondent coming within the scope of such reservations.

XXV. DISCLAIMER

105. By signing this Order and taking actions under this Order, Respondents and Federal Respondent do not necessarily agree with EPA's Findings of Fact or Conclusions of Law. Furthermore, the participation of Respondents and Federal Respondent in this Order may not be considered an admission of liability and is not admissible in evidence against Respondents or Federal Respondent in any judicial or administrative proceeding, other than a proceeding by the United States, including EPA, to enforce this Order or a judgment relating to it. Respondents and Federal Respondents retain their rights to assert claims against other potentially responsible parties at the Site including without limitation OU4. However, the Respondents agree not to contest the validity or terms of this Order, or the procedures underlying or relating to it, in any action brought by the United States, including without limitation EPA, to enforce its terms.

XXVI. OTHER CLAIMS

106. In entering into this Order, Respondents waive any right to seek reimbursement under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b). Respondents also waive any right to present a claim under Section 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 and 9612. This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA. Respondents further waive all other statutory and common law claims against EPA, including contribution and counterclaims, relating to or arising out of conduct of the RI/FS.

107. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation not a signatory to this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site including without limitation OU4.

108. Respondents shall bear their own costs and attorneys fees.

XXVII. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION

109. Respondents must establish and maintain a financial instrument or trust account or other financial mechanism acceptable to EPA, funded sufficiently to perform the work and any other requirements of this Order, including a margin for cost overruns. Within 15 days after the effective date of this Order, Respondents shall fund the financial instrument or trust account sufficiently to perform the work required under this Order projected for the period beginning with the effective date of the Order through December 31, 2005. Beginning on January 1, 2006, and on or before the fifteenth calendar day of each calendar year quarter thereafter, Respondents

shall fund the financial instrument or trust account sufficiently to perform the work and other activities required under this Order projected for the succeeding calendar year quarter.

110. If at any time the net worth of the financial instrument or trust account is insufficient to perform the work and other requirements under the Order for the upcoming quarter, Respondents must provide written notice to EPA within seven days after the net worth of the financial instrument or trust account becomes insufficient. The written notice shall describe why the financial instrument or trust account is funded insufficiently and explain what actions have been or will be taken to fund the financial instrument or trust account adequately.

111. (a) Before commencement of any work under this Order, Respondents shall secure, and must maintain in force for the duration of this Order, and for two years after the completion of all requirements of this Order, Comprehensive General Liability (“CGL”) and automobile insurance, with limits of \$5,000,000, combined single limit, naming as insured the United States. The CGL insurance must include Contractual Liability Insurance in the amount of \$1,000,000 per occurrence, and Umbrella Liability Insurance in the amount of \$2,000,000 per occurrence.
- (b) Respondents shall also secure, and maintain in force for the duration of this Order and for two years after the completion of all requirements of this Order, the following:
- i. Professional Errors and Omissions Insurance in the amount of \$1,000,000.00 per occurrence; and
 - ii. Pollution Liability Insurance in the amount of \$1,000,000.00 per occurrence, covering as appropriate both general liability and professional liability arising from pollution conditions.
- (c) For the duration of this Order, Respondents shall satisfy, or shall ensure that their contractors and subcontractors satisfy, all applicable laws and regulations regarding the provision of employer’s liability insurance and workmen’s compensation insurance for all persons performing work on behalf of Respondents, in furtherance of this Order.
- (d) If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that

described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

- (e) Before commencement of any work under this Order, and annually thereafter on the anniversary of the effective date of this Order, Respondents shall provide to EPA certificates of such insurance and a copy of each insurance policy.

112. Respondents agree to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondents, their employees, agents, servants, receivers, successors, or assignees, or any persons including, but not limited to, firms, corporations, subsidiaries and contractors, in carrying out activities under this Order. The United States Government or any agency or authorized representative thereof may not be held as a party to any contract entered into by Respondents in carrying out activities under this Order.

XXVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

113. The effective date of this Order will be the date it is signed by EPA and Respondents and Federal Respondent.

114. This Order may be amended by mutual agreement of EPA and Respondents and Federal Respondent. Amendments must be in writing and will be effective when signed by EPA, Respondents, and Federal Respondent. EPA will consult with the Quapaw Tribe and with the ODEQ prior to any amendment of the Order. The RPMs do not have the authority to sign amendments to the Order.

115. No informal advice, guidance, suggestions, or comments by EPA regarding submissions or other deliverables submitted by Respondents will be construed as relieving the Respondents of their obligation to obtain such formal approval as may be required by this Order including without limitation approvals required in EPA-approved submissions and the SOW. Any submissions including without limitation plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Order are automatically incorporated into this Order upon approval by EPA.

XXIX. TERMINATION AND SATISFACTION

116. This Order (except for Sections XIX (Retention of Records) and XXIV (Reservation of Rights and Reimbursement of Other Costs)) shall terminate when Respondents and Federal Respondent demonstrate in writing and certify to the satisfaction of EPA that all requirements of this Order have been met and EPA has approved the certification. For Respondent, the written certification shall include, without limitation, a statement that any additional work, payment of Response Costs (except for Past Response Costs), and payment of any stipulated penalties demanded by EPA, have been performed. For Federal Respondent, the written certification shall state that Federal Respondent has fulfilled its payment obligations under the funding agreement that is Section X (Reimbursement of Respondents by the Federal Respondent). The certification must be signed by a responsible official representing each Respondent and Federal Respondent. Each representative must make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this paragraph, with respect to the Respondents, a responsible official is a corporate official who is in charge of a principal business function, and, with respect to Federal Respondent, a responsible official is a Regional Division Director, or equivalent.

117. EPA will approve the Respondents' and Federal Respondent's certification and terminate this Order when it is satisfied that Respondents and Federal Respondent have performed all the requirements of the Order. Termination of this Order in accordance with this paragraph will not terminate Respondents' and Federal Respondent's obligation to comply with Sections XIX (Retention of Records), and XXIV (Reservation of Rights and Reimbursement of Other Costs) of this Order.

BY: _____ DATE: _____
Director, Superfund Division
U.S. Environmental Protection Agency
Region 6

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6**

IN THE MATTER OF:	)	CERCLA DOCKET NO. 6-03-01
)	
Tar Creek Superfund Site	)	ADMINISTRATIVE ORDER
Ottawa County, Oklahoma	)	ON CONSENT FOR RI/FS FOR OU4
)	
	)	Proceeding under Sections 104, 122(a), and
	)	122(d)(3) of the Comprehensive
Blue Tee Corp., and	)	Environmental Response, Compensation
Gold Fields Mining Corporation, and)	
the U.S. Department of the Interior	)	and Liability Act, 42 U.S.C. §§ 9604, U.S.
	)	9622(a), and 9622(d)(3)
)	
Respondents)	
_____)	

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of Tar Creek Superfund Site, CERCLA Docket Number 6-03-01, relating to the Remedial Investigation and Feasibility Study for Operable Unit 4 at the Tar Creek Superfund Site, Ottawa County, Oklahoma:

FOR SETTLING PARTY: GOLD FIELDS MINING CORPORATION

Address

By: _____
Signature Date

Print name and title of Signatory

